

## **PART 901—FINGERPRINT SUBMISSION REQUIREMENTS**

Sec.

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901.2 Interpretation of fingerprint submission requirements.

901.3 Approval of delayed fingerprint submission request.

AUTHORITY: 42 U.S.C. 14616.

SOURCE: 66 FR 27863, May 21, 2001, unless otherwise noted.

### **§901.1 Purpose and authority.**

The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616. The purpose of these provisions is to interpret the Compact, as it applies to the required submission of fingerprints, along with requests for Interstate Identification Index (III) records, by agencies authorized to access and receive criminal history records under Public Law 92-544, and to establish protocols and procedures applicable to the III and its use for noncriminal justice purposes.

### **§901.2 Interpretation of fingerprint submission requirements.**

(a) Article V of the Compact requires the submission of fingerprints or other approved forms of positive identification with requests for criminal history record checks for noncriminal justice purposes. The Compact Council finds that the requirement for the submission of fingerprints may be satisfied in two ways:

(1) The fingerprints should be submitted contemporaneously with the request for criminal history information, or

(2) For purposes approved by the Compact Council, a delayed submission of fingerprints may be permissible under exigent circumstances.

(b) The Compact Council further finds that a preliminary III name based check may be made pending the receipt of the delayed submission of the fingerprints. The state repository may authorize terminal access to authorized agencies designated by the state, to enable them to conduct such checks. Such access must be made pursuant to

the security policy set forth by the state's Control Terminal Agency.

### **§901.3 Approval of delayed fingerprint submission request.**

(a) A State may, based upon exigent circumstances, apply for delayed submission of fingerprints supporting requests for III records by agencies authorized to access and receive criminal history records under Public Law 92-544. Such applications must be sent to the Compact Council Chairman and include information sufficient to fully describe the emergency nature of the situation in which delayed submission authority is being sought, the risk to health and safety of the individuals involved, and the reasons why the submission of fingerprints contemporaneously with the search request is not feasible.

(b) In evaluating requests for delayed submissions, the Compact Council must utilize the following criteria:

- (1) The risk to health and safety; and
- (2) The emergency nature of the request.

Upon approval of the application by the Compact Council, the authorized agency may conduct a III name check pending submission of the fingerprints. The fingerprints must be submitted within the time frame specified by the Compact Council.

(c) Once a specific proposal has been approved by the Compact Council, another state may apply for delayed fingerprint submission consistent with the approved proposal, provided that the state has a related Public Law 92-544 approved state statute, by submitting the application to the FBI's Compact Officer.

## **PART 902—DISPUTE ADJUDICATION PROCEDURES**

Sec.

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AUTHORITY: 42 U.S.C. 14616.

## **§ 902.1**

SOURCE: 68 FR 66341, Nov. 26, 2003, unless otherwise noted.

### **§ 902.1 Purpose and authority.**

The purpose of Part 902 is to establish protocols and procedures for the adjudication of disputes by the Compact Council. The Compact Council is established pursuant to the National Crime Prevention and Privacy Compact (Compact), Title 42, U.S.C., Chapter 140, Subchapter II, Section 14616.

### **§ 902.2 Raising disputes.**

(a) Cognizable disputes may be based upon:

(1) A claim that the Council has misinterpreted the Compact or one of the Council's rules or standards established under Article VI of the Compact;

(2) A claim that the Council has exceeded its authority under the Compact;

(3) A claim that in establishing a rule or standard or in taking other action, the Council has failed to comply with its bylaws or other applicable procedures established by the Council; or the rule, standard or action is not otherwise in accordance with applicable law; or

(4) A claim by a Compact Party that another Compact Party has failed to comply with a provision of the Compact or with any rule or standard established by the Council.

(b) Only a Party State, the FBI, or a person, organization, or government entity directly aggrieved by the Council's interpretation of the Compact or any rule or standard established by the Council pursuant to the Compact, or in connection with a matter covered under Section 902.2(a)(4), may raise a cognizable dispute. Such disputants may request a hearing on a dispute by contacting the Compact Council Chairman in writing at the Compact Council Office, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

(c) The Chairman may ask the requester for more particulars, supporting documentation or materials as the circumstances warrant.

(d) A dispute may not be based solely upon a disagreement with the merits (substantive wisdom or advisability) of a rule or standard validly established by the Council within the scope of its

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authority under the Compact. However, nothing in this rule prohibits further discussion of the merits of a rule or standard at any regularly scheduled Council meeting.

### **§ 902.3 Referral to Dispute Resolution Committee.**

(a) The five person Dispute Resolution Committee membership shall be determined according to Compact Article VI (g). Should a dispute arise with an apparent conflict of interest between the disputant and a Committee member, the Committee member shall recuse himself/herself and the Compact Council Chairman shall determine an appropriate substitute for that particular dispute. In the case when the Compact Council Chairman is the committee member with the conflict, the Chairman shall take appropriate steps to appoint a replacement that resolves the conflict.

(b) The Compact Council Chairman shall refer the dispute, together with all supporting documents and materials, to the Council's Dispute Resolution Committee.

(c) The Dispute Resolution Committee shall recommend hearings to all disputants who raise issues that are not clearly frivolous or without merit. If the Committee recommends denying a hearing, it must articulate its reason or reasons for doing so in writing.

(d) The Dispute Resolution Committee shall consider the matter and:

(1) Refer it to the Council for a hearing;

(2) Recommend that the Council deny a hearing if the Committee concludes that the matter does not constitute a cognizable dispute under § 902.2(a); or

(3) Request more information from the person or organization raising the dispute or from other persons or organizations.

### **§ 902.4 Action by Council Chairman.**

(a) The Chairman shall communicate the decision of the Dispute Resolution Committee to the person or organization that raised the dispute.

(b) If a hearing is not granted, the disputant may appeal this decision to the Attorney General. If the Attorney General believes the disputant has raised an issue that is not frivolous or

without merit, the Attorney General may order the Compact Council Chairman to grant a hearing.

(c) If a hearing is granted, the Chairman shall:

(1) Include the dispute on the agenda of a scheduled meeting of the Council or, at the Chairman's discretion, schedule a special Council meeting;

(2) Notify the person or organization raising the dispute as to the date of the hearing and the rights of disputants under § 902.5 (Hearing Procedures); and

(3) Include the matter of the dispute in the prior public notice of the Council meeting required by Article VI (d)(1) of the Compact.

#### § 902.5 Hearing procedures.

(a) The hearing shall be open to the public pursuant to Article VI (d)(1) of the Compact.

(b) The Council Chairman or his/her designee shall preside over the hearing and may limit the number of, and the length of time allowed to, presenters or witnesses.

(c) The person or organization raising the dispute or a Compact Party charged under the provisions of § 902.2(a)(4) shall be entitled to:

(1) File additional written materials with the Council at least ten days prior to the hearing;

(2) Appear at the hearing, in person and/or by counsel;

(3) Make an oral presentation; and

(4) Call and cross-examine witnesses.

(d) Subject to the discretion of the Chairman, other persons and organizations may be permitted to appear and make oral presentations at the hearing or provide written materials to the Council concerning the dispute.

(e) All Council members, including a member or members who raised the dispute that is the subject of the hearing shall be entitled to participate fully in the hearing and vote on the final Council decision concerning the dispute.

(f) The Council shall, if necessary, continue the hearing to a subsequent Council meeting.

(g) Summary minutes of the hearing shall be made and transcribed and shall be available for inspection by any person at the Council office within the Federal Bureau of Investigation.

(h) The proceedings of the hearing shall be recorded and, as necessary, transcribed. A transcript of the hearing will be made and forwarded to the Attorney General if an appeal is filed pursuant to Section (c) of Article XI of the Compact.

(i) The Council's decision on the dispute shall be based upon a majority vote of Council members or their proxies present (as per Compact Article VI and Council Bylaws) and voting at the hearing. The Council's decision on the dispute shall be published in the FEDERAL REGISTER as provided by Section (a)(2) of Article XI and Section (e) of Article VI.

(j) The Council Chairman shall advise Council members and hearing participants of the right of appeal provided by Section (c) of Article XI of the Compact.

#### § 902.6 Appeal to the Attorney General.

(a) The Federal Bureau of Investigation or a Compact Party State may appeal the decision of the Council to the U.S. Attorney General pursuant to Section (c) of Article XI of the Compact.

(b) Appeals shall be filed and conducted pursuant to rules and procedures that may be established by the Attorney General.

(c) Appropriate notice of an appeal shall be communicated to the Council Chairman by the appealing party.

#### § 902.7 Court action.

Pursuant to Section (c) of Article XI of the Compact, a decision by the Attorney General on an appeal under § 902.6 may be appealed by filing a suit seeking to have the decision reversed in the appropriate district court of the United States.